

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EMG TECHNOLOGY, LLC

Plaintiff

v.

APPLE, INC.,
AMERICAN AIRLINES, INC.,
DELL, INC.,
HYATT CORPORATION,
MARRIOTT INTERNATIONAL, INC., and
BARNES & NOBLE, INC.,

Defendants.

CASE NO. 6:08-cv-447 (LED)

**PROTECTIVE ORDER REGARDING THE DISCLOSURE AND
USE OF DISCOVERY MATERIALS**

Plaintiff EMG Technology, LLC and Defendants Apple Inc., ~~and~~ American Airlines, Inc., and Dell, Inc.¹ anticipate that documents, testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive information are likely to be disclosed or produced during the course of discovery in this litigation and request that the Court enter this Order setting forth the conditions for treating, obtaining, and using such information.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good cause for the following Protective Order Regarding the Disclosure and Use of Discovery Materials (“Order”).

¹ Defendants ~~, Dell, Inc.;~~ Hyatt Corporation; Marriott International, Inc.; and Barnes & Noble, Inc. have not yet answered Plaintiff’s Fifth Amended Complaint.

~~(e)(b)~~ Discovery Material designated as “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” shall be subject to the provisions set forth in Paragraph 11 below, and may be disclosed, subject to Paragraph 11 below, solely to:

- (i) The Receiving Party’s outside counsel and their staff;
- (ii) Any expert or consultant retained by the Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to perform such work; and provided that: (a) such person has signed the acknowledgement form annexed hereto as Exhibit A, agreeing to be bound by the terms of this Order, and (b) no unresolved objections to such disclosure exist after proper notice has been given to all parties as set forth in Paragraph 12(b) below;
- (iii) Court reporters, stenographers and videographers retained to record testimony taken in this action;
- (iv) The Court, jury, and Court personnel; and
- (v) Any other person with the prior written consent of the Producing Party.

11. **DISCLOSURE AND REVIEW OF SOURCE CODE**

(a) Source Code that is produced by EMG Technology, LLC shall be made available for inspection in electronic format in the _____, or any other location mutually agreed by the parties. Source Code that is produced by Apple Inc. shall be made available for inspection in electronic format at the ~~Houston, Texas~~Silicon Valley, California office of its outside counsel, Fish & Richardson P.C., or any other location mutually agreed by the parties. Source Code that is produced by American Airlines, Inc. shall be made available for inspection in electronic format in the Silicon Valley, California office of its outside counsel, _____, or any other location mutually agreed by the parties. Source Code that is produced by Dell, Inc.

shall be made available for inspection in electronic format in the Silicon Valley, California office of its outside counsel, _____, or any other location mutually agreed by the parties.

(b) Pursuant to Paragraph 2.C.ii. of the July 20, 2009, Discovery Order, within one-hundred and twenty (120) days after the filing of the Discovery Order, subject to the entry of this Order, Defendants shall provide for inspection and production of source code for the accused instrumentalities. The parties will produce Source Code in the native format in which it is kept in the ordinary course of business. Prior to the first inspection of any requested piece of Source Code, the requesting party shall provide thirty (30) days notice of the Source Code that it wishes to inspect. The Requesting Party shall provide seven (7) days notice prior to commencing any additional inspections. The Requesting Party shall make its best efforts to restrict its inspection requests to normal business hours (9:00 a.m. – 5:00 p.m.). However, access after normal business hours and/or on weekends will be granted upon reasonable notice by the Requesting Party to the Producing Party.

(c) Source Code that is designated “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” shall be produced for inspection and review subject to the following provisions, unless otherwise agreed by the Producing Party:

(i) All Source Code shall be made available by the Producing Party to the Receiving Party’s outside counsel and/or experts in a private room on a secured computer without Internet access or network access to other computers, as necessary and appropriate to prevent and protect against any unauthorized copying, transmission, removal or other transfer of any Source Code outside or away from the computer on which the Source Code is provided for inspection (the “Source Code Computer”). A Source Code Computer may be networked together with another Source Code Computer by a private wired network, so long as no Source